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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,944	11/07/2001	John N. Wesley	29589/36176	1109
4743	7590	03/29/2005	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/052,944	Applicant(s) WESLEY, JOHN N.	
	Examiner MONZER R CHORBAJI	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/8/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This non-final action is in response to the amendment received on 12/20/2004

Remarks

1. The action dated 08/18/2004 has been withdrawn based on the Declaration submitted on 12/20/2004. Also, the IDS submitted on 12/20/2004 have been considered and the amendment to the specification has been accepted as well.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6-11 and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Ansari et al (U.S.P.N. 5,891,400).

With respect to claims 1 and 36, the Ansari reference teaches a fragrance assembly (system in figure 1) and a method of adding a fragrance material to a liquid candle (col.4, lines 33-35) including the following: a receptacle (figure 1, 20 and 12) with a perimeter wall (figure 1, 20), a fragrant polymeric element disposed within the receptacle (22) such that a first surface of the fragrant polymeric element is in substantially continuous contact with the perimeter wall (figure 1, 22 and 20), heating a fragrant thermoplastic material (col.4, lines 33-34) and shaping the material to the dimensions of the receptacle (col.4, lines 34-36).

With respect to claims 6-11 and 37-40, the Ansari reference teaches the following: a portion of the polymeric material proximate the ignitable end is positioned below the ignitable end (in figure 1, part of the gel is below the ignitable end of candle 14), the polymeric material extends circumferentially around the ignitable end (figure 2, 22 and 14), the receptacle includes a second wall and the polymeric element is disposed between the second wall and the perimeter wall (figure 1, outer wall of 12 and 22), the second surface of the polymeric element is in substantially continuous contact with the second wall (figure 1, inner wall of 12 and 22), the polymeric element is friction-fitted within the receptacle since the polymeric material is completely in contact with the inner surface of the receptacle, the receptacle is made of a diathermic material (col.4, lines 1-6), melting and pouring the thermoplastic material into the mold (col.4, lines 33-36), extending a wick having an ignitable end through a portion of the receptacle (placing candle 14 with a wick through the receptacle 20 is equivalent to extending a wick through the receptacle) and coupling the receptacle to a fuel container (placing candle 14 within the receptacle is equivalent to coupling such that the material that make the candle contains fuel (col.3, lines 54-56).

4. Claims 30 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammons et al (U.S.P.N. 5,840,246).

With respect to claim 30, the Hammons reference discloses a fragrance candle (figure 1, 14 and 16) including: a wick (figure 1, 16, 21 and 18), a container holding a quantity of fuel such that the absorbent end of the wick is in contact with the fuel (figure 1, 14 and 21), a diathermic receptacle (figure 41, 182 and col.13, lines 29-31) with an

exterior and interior walls that form a channel (figure 4I, 188, 187 and col.13, lines 37-40), the ignitable end extends through a portion of the interior wall (figure 4I, 186), a polymeric fragrance material (figure 4I, 184 and col.6, lines 34-38) disposed within the channel (figure 4I, 184) such that a generally vertical edge surface of the polymeric material is in contact with one wall of the receptacle (in figure 4I, the polymeric material 184 contacts the outer wall 188 of the receptacle 182).

With respect to claim 35, the Hammons reference discloses a pull-tab disposed within the receptacle beneath the polymeric material (4J, 196 in receptacle 194).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2-4, 16-21, 24-25, 27, 29 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansari et al (U.S.P.N. 5,891,400) in view of Hammons et al (U.S.P.N. 5,840,246).

The teachings of the Ansari reference have previously been set forth with respect to claims 1, 6-11 and 36-40; however with respect to claim 17, the Ansari reference teaches the following: a wick with an ignitable end (figure 1, 14), a receptacle with a perimeter wall where the ignitable end extends through the receptacle (figure 1, 20, 22, 12 and 14) by being movable (figure 1, 14) in and out of the receptacle, a polymeric element impregnated with a volatile fragrant medium and disposed within the receptacle such that a first surface is in continuous contact with the perimeter wall (figure 1, 20, 22, 12 and col.2, lines 63-67). The Ansari reference fails to disclose using a wick with an absorbent end in contact with a fuel source. The Hammons reference teaches using a wick (figure 1, 16) with an absorbent end (figure 1, 21) in contact with a fuel source (figure 1, 14) such that the ignitable end extends through a receptacle (figure 4I, 182). Further, the Hammons reference teaches that either an oil or wax can be used (col.1, lines 5-9). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle system of the Ansari reference by substituting one conventional fragrance heating means for another as taught by the Hammons reference since using a fuel improves the mood enhancing characteristics of the fragrance delivery systems (col.5, lines 42-44).

With respect to claims 18-21 and 24-25, the Ansari reference teaches the following: the receptacle includes a second wall and the polymeric element is disposed between the second wall and the perimeter wall (figure 1, outer wall of 12 and 22) , the second surface of the polymeric element is in substantially continuous contact with the second wall (figure 1, inner wall of 12 and 22), the polymeric element is friction-fitted

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within the receptacle since the polymeric material is completely in contact with the inner surface of the receptacle, the receptacle is made of a diathermic material (col.4, lines 1-6), a portion of the polymeric material proximate the ignitable end is positioned below the ignitable end (in figure 1, part of the gel is below the ignitable end of candle 14) and the polymeric material extends circumferentially around the ignitable end (figure 2, 22 and 14).

With respect to claims 2-4, 16, 27, 29 and 42, the Ansari reference fails to teach the following: a wick with an absorbent end immersed in a fuel container, vent and a pull-tab disposed within the receptacle beneath the polymeric material; however, the Hammons reference teaches the following: a wick with an absorbent end immersed in a fuel container (figure 1, 16, 21 and 14) such that the ignitable end extends through the receptacle (figure 1, 18 and 182 in figure 4I), vent (figure 10, 360) and a pull-tab disposed within the receptacle beneath the polymeric material (4J, 196 in receptacle 194). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle system of the Ansari reference by substituting one conventional fragrance heating means for another as taught by the Hammons reference since using a fuel improves the mood enhancing characteristics of the fragrance delivery systems (col.5, lines 42-44).

8. Claims 5, 22-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansari et al (U.S.P.N. 5,891,400) in view of Hammons et al (U.S.P.N. 5,840,246) and further in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claims 5, 22-23 and 26, both the Ansari reference and the Hammons reference fail to disclose the following: a wick with two absorbent ends such that the wick further includes a midpoint disposed between the first and the second absorbent ends and the ignitable end further includes a loop formed at the midpoint, a polypropylene copolymer impregnated with a volatile fragrance, a diathermic cap positioned over the fragrant element and a vent defining air passage between the fragrant element and the surroundings; however, the Tendick reference teaches the following: a wick with two absorbent ends (unlabeled ends of 38 in figure 3) and a midpoint disposed between both absorbent ends (middle of ignitable loop 38) and the ignitable includes a loop (38) formed at the midpoint, polypropylene copolymer (col.3, lines 17-19), a diathermic cap positioned over the fragrant polymeric material and is in substantially continuous contact with such material (28) and vents (40). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle system of the Ansari reference by substituting one conventional fragrance heating means for another since such a substitution is a matter of design choice as evidenced by the Tendick reference.

9. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansari et al (U.S.P.N. 5,891,400) in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claims 12-14, the Ansari reference fails to teach the following: a polypropylene copolymer impregnated with a volatile fragrance, a diathermic cap positioned over the fragrant element, a vent defining air passage between the fragrant element and the surroundings and a third surface of the fragrant element is in contact

with the diathermic cap; however, the Tendick reference teaches the following: a polypropylene copolymer (col.3, lines 17-19), a diathermic cap positioned over the fragrant polymeric material and is in substantially continuous contact with such material (28), vents (40) and a third surface of the polymeric material is in substantially continuous contact with the cap (the unlabeled inner surface of 44 is in continuous contact with 28). So, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle system of the Ansari reference by including a diathermic cap member as disclosed by the Tendick reference in order to secure the candle assembly onto the fuel source (col.2, lines 60-61).

10. Claims 15 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansari et al (U.S.P.N. 5,891,400) in view of Imus (U.S.P.N. 5,368,419).

With respect to claims 15 and 41, the Ansari reference fails to teach using a pull-tab positioned within the polymeric material to permit removal of the polymeric material from the receptacle. The Imus reference, which is in the art of dispensing insecticides, teaches having a pull-tab (64) attached to a wax material (col.5, lines 8-12). Thus, it would have obvious to one having ordinary skill in the art at the time the invention was made to modify the system and method of Ansari reference to include a pull-tab as taught by the Imus reference to facilitate manual removal of the wax material (Imus, col.5, lines 10-12).

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ansari et al (U.S.P.N. 5,891,400) in view of Hammons et al (U.S.P.N. 5,840,246) and further in view of Imus (U.S.P.N. 5,368,419).

With respect to claim 28, both the Ansari reference and the Hammons reference fail to teach using a pull-tab positioned within the polymeric material; however, the Imus reference, which is in the art of dispensing insecticides, teaches having a pull-tab (64) attached to a wax material (col.5, lines 8-12). Thus, it would have obvious to one having ordinary skill in the art at the time the invention was made to modify the system and method of Ansari reference to include a pull-tab as taught by the Imus reference to facilitate manual removal of the wax material (Imus, col.5, lines 10-12).

12. Claims 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammons et al (U.S.P.N. 5,840,246) in view of Ansari et al (U.S.P.N. 5,891,400)

With respect to claims 31 and 33, the Hammons reference fails to teach that the inner and the outer surfaces of the polymeric material are in contact with the respective interior and exterior walls of the receptacle and the polymeric material is friction-fitted within the receptacle. With regard to claims 31 and 33, the Ansari reference teaches that the inner and the outer surfaces of the polymeric material are in contact with the interior and exterior walls of the receptacle (figure 1, 12, 22 and 20) and the polymeric material is friction-fitted within the receptacle since the polymeric material is completely in contact with the inner surfaces of the receptacle. As a result, it would have obvious to one having ordinary skill in the art at the time the invention was made to modify the fragrance candle of the Hammons reference to include a polymeric material in contact with all the surfaces of the receptacle as taught by the Ansari reference since heat from the burning candle serves to heat the walls of the receptacle and consequently vaporizes the volatile substance from the gel (col.2, lines 9-12).

13. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammons et al (U.S.P.N. 5,840,246) in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claim 32, the Hammons reference fails to teach that the polymeric element includes a polypropylene copolymer, but the Tendick reference teaches that the polymeric element includes a polypropylene copolymer (col.3, lines 17-19). Thus, it would have obvious to one having ordinary skill in the art at the time the invention was made to modify the fragrance polymeric material of the Hammons reference to include a polypropylene copolymer as taught by the Tendick reference because of their lower cost and ease of being formed into a variety of configurations (col.3, lines 19-21).

14. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammons et al (U.S.P.N. 5,840,246) in view of Imus (U.S.P.N. 5,368,419).

With respect to claim 34, the Hammons reference fails to teach using a pull-tab positioned within the polymeric material; however, the Imus reference, which is in the art of dispensing insecticides, teaches having a pull-tab (64) attached to a wax material (col.5, lines 8-12). Thus, it would have obvious to one having ordinary skill in the art at the time the invention was made to modify the fragrance candle of the Hammons reference to include a pull-tab as taught by the Imus reference to facilitate manual removal of the wax material (Imus, col.5, lines 10-12).

Response to Arguments

15. Applicant's declaration removes the LeJeune et al (U.S.P.N. 6,290,914) as a reference. However, the Hammons et al (U.S.P.N. 5,840,246) reference and the Ansari

et al (U.S.P.N. 5,891,400) reference are now applied to show that in the art of deodorization a polymeric fragrance material in contact with the internal surfaces of receptacle surrounding a candle was known even before the LeJeune reference.

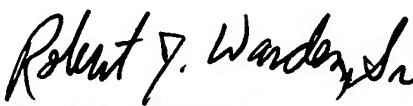
Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner
AU 1744
03/17/2005


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